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Holger von Stenzel

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EXAMINER

HEINCER, LIAM J

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## ADVISORY ACTION

### *Response to Amendment*

The declaration under 37 CFR 1.132 filed June 27, 2011 is insufficient to overcome the rejection of claims 1-4 and 11-19 based upon Heckner et al. (WO 0240578) in view of Papenfuhs et al. (WO 03/020776) as set forth in the last Office action because:

The applicant's argument of superior results over the prior art is not persuasive. Whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). See MPEP § 716.02(d). The data relied upon by the applicant only shows data points for a narrow range of polyvinyl butyrates having the claimed structure. However, the claims do not contain amounts for the monomer contents or contain amounts much broader than the single data point provided. The practical examples show amounts for the polymer units of:

Vinyl butyral 74.3--78% by weight

Vinyl acetate 1.8-2% by weight

Vinyl alcohol 18-23.5% by weight

Vinyl acetate of glyoxylic acid 0.2-2% by weight.

Claim 1 allows for any amount of the four units. For instance, a polymer containing 1% by weight vinyl butyral, 88% by weight vinyl acetate, 1% by weight vinyl alcohol and 10% by weight of the vinyl acetate of glyoxylic acid would meet the claim limitations. However, the evidence does not establish that the improvement in ion conductivity and the absence of decrease in switching capacity and delamination would be achieved through the use of this polymer. Even the narrowest claim presented (claim 3) allows for much broader ranges than the presented data. (Claim 17 recites narrower ranges than claim 3. However, the scope of the claim does not include any of the presented examples, which all contain greater than 75% by weight of acetals I and II. Thus the claim has been disregarded with respect to the declaration.)

Additionally, a range of acetals meet the limitations of the claims, and only one acetal of each type has been presented. It can not be determined from the data presented that the effects would be achieved with other acetals having the claimed structures other than vinyl butyral or a vinyl acetate of glyoxylic acid. As such, it has not been established that the electrical switching characteristics and the permanent switching stability are present throughout the claimed range.

While the improvement has been established for the small subsection of the claimed subject matter, the improvement has not been established for the entire claimed range. Thus, the showing is insufficient to overcome the prima facie case of obviousness.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIAM HEINCER whose telephone number is (571)270-3297. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/

Supervisory Patent Examiner, Art Unit 1767

/Liam Heincer/

Examiner, Art Unit 1767

July 20, 2011